26 May 2023

**DECISION**

**RACING VICTORIA**

**and**

**ISABELLA THOMSON**

**Date of hearing:** 23 May 2023

**Panel:** Judge John Bowman (Chairperson) and Judge Kathryn Kings (Acting Deputy Chairperson).

**Appearances:** Mr Raymond Livingstone appeared on behalf of the Stewards.

Ms Isabella Thomson represented herself.

**Charge:** Australian Rule of Racing (“AR”) 139(1)(a) states:

(1) A rider breaches these Australian Rules if:

(a) a banned substance under AR 136(1) is detected in a sample taken from the rider.

AR 136(1) states:

(1) Unless otherwise stated in these Australian Rules, the following substances and/or their metabolites, artefacts and isomers are specified as banned substances in riders when detected in a urine sample at a concentration above the respective threshold level:

(a) lysergic acid diethylamide (LSD) (0μg/L);

(b) all barbiturates (0μg/L);

(c) all Cannabinoids, including but not limited to:

(i) 11-Nor-delta-9-tetrahydrocannabinol-9-carboxylic acid (15ug/L);

(ii) synthetic cannabinoid analogues and/or their metabolites (such as JWH-018,

JWH-073 and HU-210).

(d) all diuretics (0μg/L);

(e) probenecid (0μg/L);

(f) alcohol (at a blood alcohol concentration in excess of 0.02% (that is, 20 milligrams

of alcohol in every 100 millilitres of blood) on a breath analysing instrument);

(g) all stimulants, including but not limited to:

(i) amphetamine (150μg/L);

(ii) methylamphetamine (150μg/L);

(iii) methylenedioxyamphetamine (MDA) (150μg/L);

(iv) methylenedioxyethylamphetamine (MDEA) (150μg/L);

(v) methylenedioxymethylamphetamine (MDMA) (150μg/L);

(vi) methylphenidate (0μg/L);

(vii) modafinil (0μg/L);

(viii) cocaine (100μg/L);

(ix) ephedrine (10,000μg/L);

(Stimulants which are specifically excluded are: levo-amphetamine; levo-methylamphetamine; phenylpropanolamine; pseudoephedrine.)

(h) all anorectics, including but not limited to:

(i) phentermine (500μg/L);

(ii) diethylpropion (0μg/L);

(iii) sibutramine (0μg/L).

(i) all opiates and opioids, including, but not limited to:

(i) morphine (0μg/L, save as specified in subrule (2));

(ii) codeine (0μg/L, save as specified in subrule (2));

(iii) oxycodone (0μg/L);

(iv) fentanyl (0μg/L);

(v) alfentanil (0μg/L);

(vi) pethidine (0μg/L);

(vii) methadone (0μg/L);

(viii) heroin (0μg/L);

(ix) monoacetylmorphine (0μg/L);

(x) hydromorphone (0μg/L);

(xi) buprenorphine (0μg/L).

(Opiates and opioids which are specifically excluded are: dihydrocodeine; dextromethorphan; pholcodine; propoxyphene; tramadol.)

(j) all dissociative anaesthetics and related substances, including but not limited

to:

(i) ketamine (0μg/L);

(ii) phencyclidine (0μg/L);

(iii) tiletamine (0μg/L).

(k) gamma-hydroxybutyrate (GHB) and pro-drugs of GHB (1,4-butanediol: gammabutyrolactone) (10,000μg/L);

(l) benzylpiperazine (500 μg/L) and phenylpiperazine (0μg/L) and their derivatives (0μg/L);

(m) tryptamine derivatives (0μg/L),(e.g. dimethyltryptamine; alphamethyltryptamine;

hydroxydimethyltryptamine and related substances);

(n) all benzodiazepines, including but not limited to:

(i) diazepam (200μg/L);

(ii) nordiazepam (200μg/L);

(iii) oxazepam (200μg/L);

(iv) temazepam (200μg/L);

(v) alprazolam (100μg/L, as alpha-hydroxyalprazolam);

(vi) clonazepam (100μg/L, as 7-aminoclonazepam);

(vii) flunitrazepam (100 μg/L, as 7-aminoflunitrazepam);

(viii) nitrazepam (100μg/L, as 7-aminonitrazepam);

(ix) bromazepam (0μg/L);

(x) clobazam (0μg/L);

(xi) flumazenil (0μg/L);

(xii) lorazepam (0μg/L);

(xiii) midazolam (0μg/L);

(xiv) triazolam (0 μ g/L); and substances with similar structure or

pharmacological activity – benzodiazepine receptor agonists (zalplon;

zolpidem; zopiclone).

**Particulars of charge:** On 17 April 2023, Racing Victoria Stewards conducted random rider testing at the Flemington Racecourse at which time Ms Thomson was selected to provide a sample of her urine.

 On 2 May 2023, Racing Victoria Stewards were notified by Racing Analytical Services Limited (“RASL”) that at the completion of testing, Ms Thomson’s sample indicated the presence of benzoylecgonine (a metabolite of Cocaine).

 On 2 May 2023, Stewards informed Ms Thomson that she was stood down from all riding and horse related work in connection with the Racing Industry until further notice.

 On 18 May, Stewards conducted an Inquiry with Ms Thomson. At the completion of the Inquiry, a penalty of four months suspension of Ms Thomson’s licence to ride trackwork was imposed to commence from midnight on 2 May and conclude 2 September 2023.

**Plea:** Guilty

**DECISION**

Ms Isabella Thomson, you are appealing against the penalty imposed on you by the Stewards in relation to your breach of Australian Rule of Racing (“AR”) 139(1)(a). The Rule relates to the use of a banned substance. In your case, that substance is cocaine. You have at all times pleaded guilty to this offence.

The positive return to cocaine resulted from a random test performed by Stewards on 17 April 2023 at Flemington racecourse. At the relevant time, you worked there as a licensed trackwork rider. You rode trackwork primarily for licensed trainer, Mr Chris Waller. You also did some trackwork riding on a more casual basis for Mr Bill Cerchi, but primarily your work was for Mr Waller. Essentially this work was from 4am to 8am daily. A reference from Mr Steven Arnold, a former leading jockey and co-worker of yours for the last five years, was placed in evidence. We have no doubt but that you are a highly skilled rider, as stated by Mr Arnold.

The positive return was found on testing to be a long way over the threshold. Your explanation was that you had used cocaine on the Saturday night prior to the testing – that is, 15 April 2023 with, as stated, the testing being on 17 April. Thus, the reading, which was multiple times over the threshold, was obtained approximately a day and a half after the admitted use.

The penalty imposed by the Stewards was suspension for four months, this commencing on 2 May 2023. As stated, you are appealing in relation to the severity of this penalty. You have no relevant prior conviction.

Your background is that you are 34 years of age and originally from New Zealand, where your family still lives. You moved to Australia in 2011 and have been a licensed trackwork rider for a number of our leading trainers. We do not doubt that you are a very skilled rider and that your services have been in demand. We would refer again to the reference of Mr Arnold. You are also a participant in powerlifting at a very high level.

Mr Livingstone, on behalf of the Stewards, has referred us to a list of penalties imposed in similar cases. The penalty imposed for a first offences by stable employees and riders with no prior convictions has been four months suspension. That is so virtually without exception and has been so since 2020. It is the penalty which the Stewards imposed in the present case.

Bearing in mind such previous penalties and the fact of the high reading in your case, we see no reason not to impose a similar penalty. We appreciate the distress this whole offence has caused you. However, the reasoning behind the Rule and the penalty imposed concerns the safety and welfare of persons and horses. That is a very important consideration.

In summary, the appeal is dismissed and the penalty of suspension for four months remains in place.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal